S.B. Civil Writ Petition NO.1276/2004
Bhanwar Singh Chauhan
vs
The State of Rajasthan & Ors.

DATE OF ORDER : - 13.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.JP Joshi, for the petitioner.
Mr.LR Upadhyaya, Dy.GA, for the respondents.

<><><>

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 15.3.2004 by which the Director (Mines), Udaipur ordered to forfeit the earnest money deposited by the petitioner, which was deposited by the petitioner to get the contract under the notice inviting tenders dated 8th Oct., 2003.

Brief facts of the case are that the petitioner submitted tender in response to the notice inviting tender dated 8th Oct., 2003. He was successful bidder and after receipt of the telegram dated 13th Nov., 2003 (Annex.3), the petitioner deposited FDRs of Rs.2,50,000/- with the respondents. The FDRs submitted by the petitioner were issued by Madhav Nagrik Sahkari Bank Ltd, Sirohi, but as per the condition no.12 of the conditions of the NIT, the petitioner was required to deposit the FDRS from a Nationalized Bank only. According to petitioner, the FDRs

were accepted by the respondent-department on 14th Nov., 2003, the day following the date of telegram. According to petitioner, he complied with the conditions of NIT and deposited the FDRs within period. The petitioner subsequently, came to know that there may be objection that the petitioner has not deposited the FDRs from a Nationalized Bank, therefore, the petitioner submitted a letter on 18th Nov., 2003 requesting the respondents to permit petitioner to furnish another FDRs in place of FDRs,which the petitioner has already submitted. In this letter, the petitioner also pointed out that the FDRs submitted by the petitioner can also be accepted against the terms and conditions of the NIT in view of the circular of the Reserved Bank of India. According to petitioner, the petitioner even obtained the FDRs from the State Bank of Bikaner and Jaipur on 18th Nov., 2003, despite the fact that he did not receive any communication from the respondents. The petitioner submitted a representation on 12th March, 2004 narrating all the facts and requested that his tender may be accepted. However, the respondents instead of passing any order, invited fresh offers by issuing a notice inviting tenders, which was published in the newspaper on 11th March, 2004. According to petitioner, till then the petitioner's offer was not rejected nor any order to forfeit the earnest money was passed by the authorities. After issuing this fresh notice inviting tenders, on 15th March, 2004, the Director (Mines) passed the impugned order cancelling the offer of the

petitioner and also forfeit the earnest money.

Learned counsel for the petitioner submitted that the order dated 15.3.2004 has been passed in gross violation to the principles of natural justice as no opportunity of hearing was given to the petitioner before passing the impugned order. It is also submitted that the petitioner deposited the FDRs and those were accepted by the respondents without any objection and were kept by them for a long period. The condition of submitting the FDRs from Nationalized Bank is not a condition in the rule 35G. It is also submitted that though a condition is mentioned in the conditions of notice inviting tenders, but the petitioner was asked to deposit the FDRs vide Annex.3 dated 13th Nov., 2003 wherein it is not mentioned that petitioner should deposit the FDRs from a Nationalized Bank only. According to learned counsel for the petitioner, the condition of submitting the FDRs from a Nationalized Bank is not a condition mandatory rather it can be said that the condition is subsidiary condition only. According to learned counsel for the petitioner, the petitioner complied with all the terms and conditions of the NIT and if there is any irregularity because of not submitting the FDRs from the Nationalized Bank, that was a defect curable and the respondents could have kept the FDRs till the fresh FDRs from the Nationalized Bank are submitted by the petitioner, but on that count, the respondents should not have cancelled the offer of the petitioner and even if they have

cancelled then that is the sufficient penalty for the petitioner, but the penalty of forfeiture of the earnest money should not have been imposed by the respondents. It is also submitted that petitioner even obtained the FDRs from the Nationalized Bank also, before the offer of the petitioner was cancelled and the petitioner submitted his offer in writing in the month of Nov., 2003 itself. The respondents could have accepted the FDRs of Nationalized Bank. The difference of period is only four days because the petitioner submitted the FDRs of the Madhav Nagrik Sahkari Bank Ltd, Sirohi on 14th Nov., 2003 and petitioner offered to submit the FDRs from Nationalized Bank by letter dated 18th Nov., 2003.

According to learned counsel for the petitioner, now the State Government vide communication dated 30th March, 2005 relaxed the condition under rule 35G of the Rajasthan Mineral Minor Concession Rules, 1986 in one another case. According to the petitioner, this communication was in response to a letter in relation to an offer made by contractor to submit FDR from the Nationalized Bank, which obviously he had not submitted in time and not of a Nationalized Bank.

The learned Dy. Government Advocate contesting the contention of the petitioner, submitted that the petitioner could have challenged the impugned order by preferring revision petition under rule 47 of the

rules of 1986. Therefore, the writ petition of the petitioner is not maintainable. On merit it is submitted that the condition of submitting the security amount is clearly provided under rule 35G. The time is fixed by the rule and that has been conveyed to the petitioner by incorporating the condition in the tender notice. In the tender notice, it is clearly mentioned that the bidder is required to submit the security amount in the form of FDR/bank guarantee from a Nationalized Bank only. The petitioner took part in the bid knowing it well that he has to comply with all these conditions, otherwise penal action will follow. According to learned counsel for the respondents in view of the above, when petitioner did not comply with the requirement of the condition of the rules, the respondents rightly passed the order to forfeit the earnest money.

I considered the submissions of learned counsel for the parties and perused the documents placed on record. It is clear that the petitioner, though was under obligation to submit the FDRs from the Nationalized Bank, but he submitted the FDRs from Madhav Nagrik Shakari Bank Ltd., which is not a Nationalized Bank. The petitioner has placed on record, the certificate issued by the Reserved Bank of India by which the Madhav Nagrik Sahkari Bank Ltd., Sirohi was permitted to open a bank and the petitioner also submitted letter on 18th Nov., 2003 within four days from his submitting the FDRS of the Madhav Nagrik

Sahakari Bank Ltd. requesting the respondents to permit the petitioner to submit the FDRs from Nationalized Bank. That offer was never rejected by the respondents and order dated 15.3.2004 has been passed without considering that offer. The order dated 15.3.2004 has not been even passed holding that the condition of submitting FDRs from the Nationalized Bank is mandatory condition and is not an ancillary condition. These questions could have been decided by the Director (Mines) after hearing the petitioner only and after examining whether such a condition can be said to be a mandatory condition. It will be worthwhile to mention here that the security was for three years and if the respondents have fixed a condition to secure their interest in better way by getting the FDRs from Nationalized Bank only, they have acted bonafidely,but at the same time, if that security is not effected and the safeguard of interest remained intact and purpose would have been well served by asking the party to submit the FDRs of the Nationalized Bank keeping the FDRs submitted by the bidder with the department. There is no allegation of lack of bonafide on the part of the bidder then in such a situation the condition should not have been enforced against the bidder so as to impose penalty of forfeiture of entire security amount.

Since there is complete violation of principles of natural justice and in facts and circumstances of the case, this Court finds that the mistake committed by the petitioner is not with intention to take

benefit of the situation because the FDRs submitted by the petitioner were issued by a duly registered bank, which obviously on depositing the amount by the petitioner with the bank. Therefore, in these circumstances when the writ petition has already been admitted by this Court and the objection has been raised at belated stage, this Court deems it proper not to direct the petitioner to go before the revisional authority for the relief.

In view of the above, the writ petition of the petitioner is allowed. The order dated 15.3.2004 so far as it relates to the forfeiture of the earnest money is concerned is set aside. The respondents are directed to pay the amount of earnest money to the petitioner within a period of one month from today. However, the petitioner shall not be entitled for any interest over the above earnest money because the petitioner was also guilty of not submitting the FDRs of a Nationalized Bank, though that was not found to be malafidely, but at the same time the respondents have not proceeded wholly in arbitrary manner.

(Prakash Tatia), J.

c.p.goyal/-